

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

National Beef Packing Company, LLC)
Liberal, Kansas)

Respondent)

Docket Nos.
EPCRA-07-2008-0003
CERCLA-07-2008-0009
CAA-07-2008-0013

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA), and National Beef Packing Company, LLC (Respondent), have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), as amended, 42 U.S.C. § 9609; Section 325 of the Emergency Planning and Community Right-to-Know Act (hereinafter "EPCRA"), 42 U.S.C. § 11045; and Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of

the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, where the first date of alleged violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated Section 103 of CERCLA, 42 U.S.C. § 9603, and the regulations promulgated pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, and codified at 40 C.F.R. Part 302; and Section 304 of EPCRA, 42 U.S.C. § 11004, and the regulations promulgated pursuant to Section 328 of EPCRA, 42 U.S.C. § 11048, and codified at 40 C.F.R. Part 355. This Consent Agreement and Final Order also serves notice that the EPA has reason to believe that Respondent has violated the provisions governing Chemical Accident Prevention, and specifically the requirement to implement a Risk Management Plan as required by 40 C.F.R. Part 68 and Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for those violations.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region 7, is the Director, Air & Waste Management Division, EPA, Region 7.

4. The Respondent is National Beef Packing Company, LLC, 12200 North Ambassador Drive, Kansas City, Missouri 64163. Respondent is a Delaware limited liability company authorized to do business in the State of Kansas.

Statutory and Regulatory Requirements

5. Section 103(a) of CERCLA and the regulation set forth at 40 C.F.R. § 302.6 require any person in charge of a vessel or an onshore or offshore facility, as soon as he or she has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than the reportable quantity established pursuant to Section 102 of CERCLA determined in any 24-hour period shall notify the National Response Center as soon as he or she has knowledge of such release.

6. Section 304(b) of EPCRA and the regulation set forth at 40 C.F.R. § 355.40, require the owner or operator of a facility at which a hazardous chemical is produced, used, or stored and at which there is a release of a reportable quantity of any EPCRA extremely hazardous substance or CERCLA hazardous substance to immediately notify the State Emergency Response Commission of any state likely to be affected by the release and the emergency coordinator for the Local Emergency Planning Committee for any area likely to be affected by the release.

7. Section 112(r)(7) of the CAA and the regulations set forth in 40 C.F.R. Part 68, Subparts A through H, Chemical Accident Prevention Program, require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program. The Risk Management Plan ("RMP") must be submitted to EPA. The RMP must be submitted by an owner or operator

of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999; three years after the date on which a regulated substance is first listed; or the date on which a regulated substance is first present above the threshold quantity in a process.

8. Section 109(b)(1) of CERCLA, 42 U.S.C. § 9609(b)(1), authorizes a civil penalty of not more than \$25,000 per day for each day during which a violation continues for any violation of the requirements of Section 103(a) of CERCLA. Under the Debt Collection Improvement Act of 1996 as implemented by the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Part 19, penalties of up to \$32,500 per day for each day a violation continues may be assessed for violations of CERCLA Section 103 that occur after March 15, 2004.

9. Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorizes a civil penalty for violations of the requirements of Section 304 of EPCRA of not more than \$25,000 per day for each day during which the violation continues. Under the Debt Collection Improvement Act of 1996 as implemented by the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Part 19, penalties of up to \$32,500 per day for each day a violation continues may be assessed for violations EPCRA Section 304 that occur after March 15, 2004.

10. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the CAA referenced therein, including Section 112(r)(7). Section 113(d) of the CAA,

42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997, through March 15, 2004, and \$32,500 per day for each violation that occurs after March 15, 2004.

Definitions

11. The regulations at 40 C.F.R. § 68.3 define "stationary source" in part, as any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

12. The regulations at 40 C.F.R. § 68.3 define "threshold quantity" as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

13. The regulations at 40 C.F.R. § 68.3 define "regulated substance" as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

14. The regulations at 40 C.F.R. § 68.3 define "process" as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any

group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

Alleged Violations

General Allegations

15. The EPA alleges that Respondent has violated CERCLA Section 103, EPCRA Section 304, and Section 112(r) of the CAA, and federal regulations promulgated pursuant to the CAA as follows:

16. Respondent is, and was at all times referred to herein, a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9602(21); Section 329(7) of EPCRA, 42 U.S.C. § 11049(7); and Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

17. At all times relevant hereto, Respondent owned and operated and was in charge of National Beef Packing Company, LLC, located at 1501 E. 8th Street, Liberal, Kansas.

Count I

18. Respondent's Liberal, Kansas, facility is a "facility" as defined by Section 101(9) of CERCLA and Section 329(4) of EPCRA.

19. Anhydrous ammonia is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9602(14), with a reportable quantity of 100 pounds, as designated by 40 C.F.R. § 302.4. Anhydrous ammonia is an "extremely hazardous substance," as defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and as designated pursuant to Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and listed in 40 C.F.R. Part 355, Appendix A.

20. At all times relevant hereto, hazardous chemicals as defined by Section 329(5) of EPCRA, 42 U.S.C. § 11049(5), were produced, used, or stored by Respondent's facility.

21. On or about April 4, 2005, there was a release of anhydrous ammonia from Respondent's facility in excess of the reportable quantity designated by 40 C.F.R. § 302.4. Respondent discovered the release on April 4, 2005.

22. Respondent did not immediately notify the National Response Center of the release as soon as it had knowledge of the release.

23. Respondent's failure to notify the National Response Center of the release as soon as it had knowledge of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603, and of the requirements of 40 C.F.R. § 302.6.

24. Respondent did not immediately notify the State Emergency Response Commission or the Local Emergency Planning Committee of the release.

25. Respondent's failure to immediately notify the State Emergency Response Commission or the Local Emergency Planning Committee of the release is a violation of Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), and of the requirements of 40 C.F.R. § 355.40(b).

Count II

26. The facts stated in paragraphs 18 through 20, above, are herein incorporated.

27. On or about August 6, 2005, there was a release of anhydrous ammonia from Respondent's facility in excess of the reportable quantity designated by 40 C.F.R. § 302.4. Respondent discovered the release on August 6, 2005.

28. Respondent did not immediately notify the National Response Center of the release as soon as it had knowledge of the release.

29. Respondent's failure to notify the National Response Center of the release as soon as it had knowledge of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603, and of the requirements of 40 C.F.R. § 302.6.

30. Respondent did not immediately notify the State Emergency Response Commission or the Local Emergency Planning Committee of the release.

31. Respondent's failure to immediately notify the State Emergency Response Commission or the Local Emergency Planning Committee of the release is a violation of Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), and of the requirements of 40 C.F.R. § 355.40(b).

Count III

32. Respondent's Liberal, Kansas, facility is a "stationary source" pursuant to 40 C.F.R. § 68.3.

33. Anhydrous ammonia is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

34. Respondent is subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because it is an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

35. Respondent is required under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program.

36. Respondent's risk management program did not include all the requirements of a management system and a prevention program. Specifically, Respondent failed to: (1) compile and maintain information pertaining to the technology of the process including maximum intended inventory as required by 40 C.F.R. § 68.65(c)(1)(iii); (2) develop and implement written operating procedures that address temporary operations as required by 40 C.F.R. § 68.69(a)(1)(iii); and (3) certify the compliance audit at least every three years as required by 40 C.F.R. § 68.79(a-b).

37. Respondent's failure to comply with 40 C.F.R. Part 68, as set forth above all are violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

CONSENT AGREEMENT

38. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

39. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order.

40. Respondent neither admits nor denies the factual allegations set forth above.

41. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this Consent Agreement and Final Order.

42. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

43. This Consent Agreement and Final Order addresses all civil and administrative claims for the CERCLA, EPCRA, and CAA violations identified above, existing through the effective date of this Consent Agreement and Final Order. Complainant reserves the right to take enforcement action with respect to any other violations of the CERCLA, EPCRA, and CAA or other applicable law.

44. To the best of Respondent's knowledge, Respondent's facility is in compliance with all requirements of Section 103 of CERCLA, 42 U.S.C. § 9603; Section 304 of EPCRA, 42 U.S.C. § 11004; and Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

45. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

46. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

47. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the Consent Agreement and Final Order and to legally bind Respondent to it.

FINAL ORDER

Pursuant to the provisions of CERCLA, 42 U.S.C. § 9601; EPCRA, 42 U.S.C. § 11001; and the CAA, 42 U.S.C. § 7401; and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of \$37,500, within thirty (30) days of entry of this Final Order. Payment shall be by three cashier's or certified checks; two in the amount of \$16,250 and one in the amount of \$5,000.

(a) The first check, in the amount of \$16,250, shall be made payable to the "United States Treasury," reference docket number EPCRA-07-2008-0003, and be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

(b) The second check, also in the amount of \$16,250, shall be made payable to the "United States Treasury," reference docket number CERCLA-07-2008-0009, and be remitted to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, Missouri 63197-9000

(c) The third check, in the amount of \$5,000, shall be made payable to the
“United States Treasury,” reference docket number CAA-07-2008-0013, and be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

2. A copy of each check shall be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 N. Fifth Street
Kansas City, Kansas 66101; and

Robert W. Richards
Assistant Regional Counsel
United States Environmental Protection Agency, Region 7
901 N. Fifth Street
Kansas City, Kansas 66101.

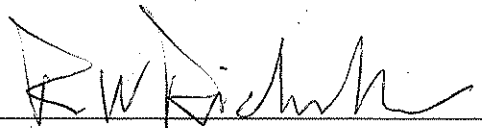
3. This executed Consent Agreement and Final Order shall be filed with the Regional
Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas
City, Kansas 66101.

4. The effective date of this Order shall be the date on which it is signed by the Regional
Judicial Officer.

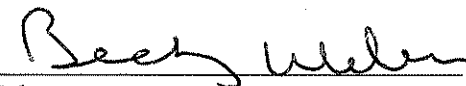
5. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

6. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

By 
Robert W. Richards
Assistant Regional Counsel

Date 4/22/08

By 
Becky Weber
Director
Air & Waste Management Division

Date 5/05/08

RESPONDENT:
NATIONAL BEEF PACKING COMPANY, LLC
LIBERAL, KANSAS

By Terry J. Henson

Title EUP Operation

Date 4-18-08

IT IS SO ORDERED. This Final Order shall become effective immediately.

By Karina Borromeo
Karina Borromeo
Regional Judicial Officer

Date May 8, 2008

IN THE MATTER OF National Beef Packing Company, LLC, Respondent
Docket Nos: EPCRA-07-2008-0003; CERCLA-07-2008-0009 and CAA-07-2008-0013

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Robert W. Richards
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Ms. Parthenia B. Evans
Stinson Morrison Hecker LLP
1201 Walnut, Suite 2900
Kansas City, Missouri 64106-2150

Dated: 5/9/08


Kathy Robinson
Hearing Clerk, Region 7